

SENATE BILL REPORT

ESHB 1846

As Passed Senate, March 10, 2022

Title: An act relating to providing a tax preference for rural and nonrural data centers.

Brief Description: Providing a tax preference for rural and nonrural data centers.

Sponsors: House Committee on Finance (originally sponsored by Representatives Berg and Ramel).

Brief History: Passed House: 3/4/22, 68-30.

Committee Activity: Ways & Means: 3/07/22, 3/09/22 [DP, DNP, w/oRec].

Floor Activity: Passed Senate: 3/10/22, 36-13.

Brief Summary of Bill

- Expands and extends the existing sales and use tax exemption for data centers in rural counties.
- Establishes a sales and use tax exemption for the purchase of eligible server equipment, and related labor and services, for eligible data centers in counties with a population over 800,000.
- Requires a qualifying business operating a new data center to attain a specified sustainable design or green building standard certification within three years after being placed in service.
- Requires data centers receiving an exemption to be developed under a community workforce agreement or project labor agreement, for new construction work performed on computer data center site.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue;

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Brown, Assistant Ranking Member, Operating; Billig, Carlyle, Conway, Dhingra, Gildon, Hasegawa, Hunt, Keiser, Mullet, Pedersen, Rivers, Van De Wege, Warnick and Wellman.

Minority Report: Do not pass.

Signed by Senators Schoesler, Assistant Ranking Member, Capital; Honeyford, Ranking Minority Member, Capital; Muzzall and Wagoner.

Minority Report: That it be referred without recommendation.

Signed by Senators Wilson, L., Ranking Member; Braun.

Staff: Alia Kennedy (786-7405)

Background: Retail Sales and Use Tax. Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use taxes apply to the value when used in this state. The state, most cities, and all counties levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent. Local sales and use tax rates vary depending on the location.

Rural Data Center Tax Preference. A retail sales and use tax exemption is provided to qualifying businesses operating data centers, and qualifying tenants of those data centers, located in rural counties. The sales and use tax exemption is available for purchases of eligible server equipment and labor and services to install server equipment in an eligible data center. A sales and use tax exemption is allowed for purchases of eligible power infrastructure and the labor and services to construct, install, repair, alter, or improve eligible power infrastructure.

The owner of an eligible data center with a combined square footage of at least 100,000 square feet and the tenants of an eligible data center located in a rural county may be eligible for a sales and use tax exemption. A rural county is defined as a county with a population density of less than 100 persons per square mile or counties smaller than 225,000 square miles as of April 1, 2021. Currently, there are 30 counties that meet the rural county definition.

To qualify, the data center must have a building permit to construct, renovate, or expand the data center issued between:

- April 1, 2010, and June 30, 2011;
- April 1, 2012, and June 30, 2015; or
- July 1, 2015, and June 30, 2025.

The exemption is available on a first-in-time basis based on the date the application for the sales and use tax exemption is received by the Department of Revenue. Exemption certificates expire two years after the date of issuance, unless construction of the data center has begun. An eligible taxpayer must file an annual tax performance report by May 31 of

the year following the year the applicant becomes eligible to claim the sales and use tax exemption.

There are hiring requirements for recipients of the sales and use tax exemption. Within six years of the issue date on the sales and use tax exemption certificate, the qualifying data center must establish that net employment has increased by a minimum of 35 family-wage employment positions or three family-wage employment positions for each 20,000 square feet of space or less that is newly dedicated to housing working servers at the eligible computer data center. If the family wage job requirement is not met, all previously exempted sales and use taxes are immediately due and payable.

Family-wage employment positions are defined as new permanent full-time jobs with employer-provided health care, requiring 40 hours of work and with a wage that is 150 percent of the per capita personal income of the county where the center is located.

Tax Preferences. State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Washington has over 700 tax preferences, including a variety of sales and use tax exemptions. Legislation that establishes or expands a tax preference must include a tax preference performance statement that identifies the public policy objective of the preference, as well as specific metrics the Joint Legislative Audit and Review Committee (JLARC) can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after ten years unless an alternative expiration date is provided.

Summary of Bill: Rural Data Center Tax Preference. The sales and use tax exemption for qualifying businesses operating data centers located in rural counties, and qualifying tenants of those data centers, is extended. No new exemption certificates may be issued by the Department of Revenue (DOR) on or after July 1, 2036, and the exemptions fully expire July 1, 2048. The exemption certificate is effective on the date the application is received from DOR. No tax refunds may be given for purchases made before the effective date of this bill.

An eligible computer data center must be located in a county that meets the existing rural county definition as of the time of application for an exemption.

Refurbishment Certificate. Qualified businesses and qualified tenants may use their exemption certificate to refurbish existing eligible data centers. DOR may issue no more than six certificates for data centers that qualify through refurbishment each calendar year. Certificates are available for refurbished data centers on a first-in-time basis. Each qualifying business may apply for only one certificate for a refurbished data center each calendar year.

Refurbishment means a substantial improvement to an eligible computer data center for

which a certificate of occupancy is not issued. These improvements must update or modernize servers, server space, ventilation, or power infrastructure in an eligible data center. To be considered refurbished, the qualifying business must certify to DOR that the refurbishment is complete. It is considered complete when the improved portion of the computer data center is operationally complete and can be used as intended.

Family-wage Employment Requirement. For new exemptions issued, the income requirement to be considered a family-wage employment position is a wage equivalent to or greater than 125 percent of the per capita personal income of the county in which the qualified project is located as published by the Employment Security Department. The per capita personal income to be used to determine qualification for any year is the amount that was established for the immediate prior year.

Qualifying businesses or qualifying tenants must maintain the minimum family wage employment positions while the exemption certificate is valid.

The number of family-wage jobs the qualifying tenant must have created may be based on the proportion of the space they occupy in the data center. In addition to existing requirements for noncompliance, an issued exemption certificate may also be canceled if the number of family-wage jobs requirement is not met. Repayment of any previously exempted tax for failure to maintain the required family wage employment must be calculated in proportion to the duration of time for which the requirement was not met.

Building Standards Certification Requirement. Within three years of being placed in service, a qualifying business operating a newly constructed data center must certify to DOR it has attained certification under one or more sustainable design or green building standards, including the Building Research Establishment's Environmental Assessment Method (BREEAM), Energy star, Envision, International Organization for Standardization (ISO) 50001 energy management systems, Leadership in Energy and Environmental Design (LEED) standards, Green Globes, Underwriters Laboratories (UL) 3223, or other reasonable standards approved by DOR.

DOR may require qualifying businesses and qualifying tenants to submit records necessary to verify the sustainable design or green building standard certification requirements have been met. All or a portion of previously exempted sales and use taxes may be immediately due and payable if the requirements are not met.

Exceptions and Extensions of Certain Requirements. DOR may provide exceptions or extensions to the family-wage employment requirement and the building standard certification requirement due to an extraordinary event or circumstance beyond the control of the qualifying business or qualifying tenant including, but not limited to, a declaration of an economic recession, pandemic, or natural disaster affecting data center operations. Any tax repayment must be proportional to the percentage of requirements not met.

The Department of Labor and Industries (L&I) must assist DOR in determining whether the family wage employment requirement is met, and whether to allow exceptions or extensions for extraordinary events or circumstances beyond the control of the qualifying business or qualifying tenant. DOR may require the exemption recipient to submit records necessary to determine whether the requirements have been met.

Community Workforce Agreements or Project Labor Agreements Requirement. For new exemptions issued, a qualifying business or qualifying tenant receiving the exemption must certify to DOR that, for new construction work to be performed on the site of the computer data center, the computer data center receiving an exemption will be constructed by the prime contractor and its subcontractors in a way that includes community workforce agreements or project labor agreements and the payment of area standard prevailing wages and apprenticeship utilization requirements.

Additional Provisions. A qualifying business or tenant claiming the exemption is encouraged to take direct steps to adopt practices to mitigate negative environmental impacts resulting from expanded use of data centers, including the adoption of certain industrial symbiosis practices.

An exemption certificate may be assigned or transferred if the assignee or transferee meets specified requirements and has the written consent of DOR.

As a part of the annual tax performance report requirement, a qualifying business or a qualifying tenant must identify construction firm names and employment levels used for constructing, renovating, refurbishing, or remodeling the data centers.

Data Center Tax Preference in Certain Non-Rural Counties. An exemption to the sales and use tax is established for qualifying businesses and tenants of eligible data centers. The exemption applies to the purchase of eligible server equipment and services for installing such equipment. In addition, the exemption applies to the purchase of eligible power infrastructure, including labor, material, equipment, and services for constructing, installing, repairing, altering, or improving eligible power infrastructure.

To qualify, a business must be in a county with a population over 800,000 people as determined in the April 1, 2021, population estimate provided by the Office of Financial Management. King, Pierce, and Snohomish counties meet the population criterion.

An application must be made to DOR for the exemption certificate. A qualifying business must submit records of available power for customers at the time of application, which demonstrates it has a minimum of 1.5 megawatts of available power. A tenant must contract for a minimum electrical capacity of 150 kilowatts for server and computer equipment in a qualifying business.

The exemption certificate may be used to build, repair, or refurbish a data center. The

number of exemption certificates is limited to six per year for the first calendar year and six per year for years three through six of the exemption.

The certificate is available on a first-in-time basis. Construction must commence within two years of certificate issuance. The exemption certificate is effective the date the application is received by DOR. No new exemption certificates may be issued by DOR on or after July 1, 2028, and the exemptions fully expire July 1, 2038.

Family-wage Employment Requirement. Within six years, a qualifying business must establish a net employment increase of at least three jobs per 20,000 square feet of space, and qualifying tenants must establish a net employment increase based on the space occupied in the eligible computer data center. Family-wage employment positions are new, permanent full-time jobs with employer provided health care, requiring 40 hours of work and with a wage that is 125 percent of the per capita personal income of the county where the center is located as published by the Employment Security Department. The per capita personal income to be used to determine qualification for any year is the amount that was established for the immediate prior year.

Qualifying businesses or qualifying tenants must maintain the minimum family wage employment positions while the exemption certificate is valid. Repayment of any previously exempted tax for failure to maintain the required family wage employment must be calculated in proportion to the duration of time for which the requirement was not met.

Building Standards Certification Requirement. Within three years after being placed in service, a qualifying business operating a newly constructed data center must certify to DOR that it has attained certification under one or more sustainable design or green building standards, including BREEAM, Energy star, Envision, ISO 50001 energy management systems, LEED standards, Green Globes, UL 3223, or other reasonable standards approved by DOR.

DOR may require qualifying businesses and qualifying tenants to submit records necessary to verify the sustainable design or green building standard certification requirements have been met. All or a portion of previously exempted sales and use taxes may be immediately due and payable if the requirements are not met.

Exceptions and Extensions of Certain Requirements. DOR may provide exceptions or extensions to the family wage employment requirement and the building standard certification requirement due to an extraordinary event or circumstance beyond the control of the qualifying business or qualifying tenant including, but not limited to, a declaration of an economic recession, pandemic, or natural disaster affecting data center operations. Any repayment of taxes must be calculated proportionally based on percentage of requirements not met.

L&I must assist DOR in determining whether the family wage employment requirement is

met, and whether to allow exceptions or extensions for extraordinary events or circumstances beyond the control of the qualifying business or qualifying tenant. DOR may require the exemption recipient to submit records necessary to determine whether the requirements have been met.

Community Workforce Agreements or Project Labor Agreements Requirement. A qualifying business or qualifying tenant receiving the exemption must certify to DOR that, for new construction work to be performed on the site of the computer data center, the computer data center receiving an exemption will be constructed by the prime contractor and its subcontractors in a way that includes community workforce agreements or project labor agreements and the payment of area standard prevailing wages and apprenticeship utilization requirements.

Additional Provisions. A qualifying business or tenant claiming the exemption is encouraged to take direct steps to adopt practices to mitigate negative environmental impacts resulting from expanded use of data centers, including the adoption of certain industrial symbiosis practices.

An exemption certificate may be assigned or transferred if the assignee or transferee meets specified requirements and has the written consent of DOR.

A taxpayer claiming the credit must file an annual tax performance report with DOR. The report must identify construction firm names and employment levels used for constructing, renovating, refurbishing, or remodeling the data centers.

Electric Grid Resilience and Reliability Study. The Department of Commerce (Commerce) is required to contract with the Pacific Northwest National Laboratory to evaluate Washington's current and future electric grid resilience and reliability. The study must identify key grid resilience and reliability challenges that could emerge under multiple future scenarios given adoption of new energy technologies, changes in residential and industrial energy demand, and changes in energy production and availability from both in and out-of-state sources. The study must review and incorporate existing models, data, and study findings, including, but not limited to, the "Washington 2021 state energy strategy and the 2021 northwest power plan," to ensure a duplication of efforts does not occur and to highlight modeling gaps related to regional grid resilience planning.

The impact to the future electric grid resulting from the growth of the information technology sector must be studied, including the impact of increased data center energy demand from the rural and non-rural data center tax exemptions.

An advisory group must be convened to inform scenario development and review results. The advisory group may include representatives from the Washington State University Pacific Northwest National Laboratory Advanced Grid Institute, the Energy Facility Site Evaluation Council, Commerce, and the Utilities and Transportation Commission. The

advisory group may include relevant legislative committees, energy producers, utilities, labor, environmental organizations, tribes, and communities at high risk of rolling blackouts and power supply inadequacy.

Recommendations must be developed for enhancing electric grid reliability and resiliency that include considerations of affordability, equity, and federal funding opportunities.

Commerce is required to report to the appropriate committees of the Legislature the findings and recommendations regarding the electric grid resilience and reliability evaluation by December 1, 2022.

The study is null and void if funding is not provided in the omnibus appropriations act by June 30, 2022.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Washington needs tax incentives like the one in this bill to be able to compete with states like Oregon and Idaho. Supporting data centers in an investment to the local economy and community. The data center industry stimulates the economy by creating jobs and increasing revenue. Data center employment provides both retirement and health benefits, as well as good family wages. This bill supports apprenticeship training opportunities that lead to lifelong careers. The workforce and labor standards under this bill help with job placement for women and people of color. Data center workers are forced to travel out of state for employment. This is a targeted incentive for data center construction and refurbishment that prioritizes fair labor and environmental standards. The bill is a significant investment into the state's data center industry that supports both job training and creation. Rural data centers do not have the economic incentives they need to be competitive. The bill contributes to the growth of critical fiber infrastructure.

CON: The project labor agreement requirements restrict access to the benefits of this bill. Project labor agreements limit open and fair competition and create an uneven playing field.

Persons Testifying: PRO: Patrick Boss, Port of Quincy; Matthew Hepner, City of East Wenatchee position 7; John Traynor, IBEW Local 191; Heather Kurtenbach, Ironworkers Local 86; Mark Riker, Washington State Building & Construction Trades Council; Joe Kendo, Washington State Labor Council; Michael Transue, Tacoma Pierce County Chamber and Tacoma Pierce County Economic Development Board; Nathe Lawver, Nathe

Lawver, Executive Secretary Pierce County Building & Construction Trades; Hans Zeiger, Pierce County Councilmember; Deigo Hernandez, Sabey Data Center Properties; Fernando Arevalo.

CON: Tommy Gantz, Association of Washington Business; Jerry VanderWood, Associated General Contractors (AGC).

Persons Signed In To Testify But Not Testifying: No one.